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August 25, 2023

By ECF

Hon. Ronnie Abrams
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *Falvey Cargo Underwriting Ltd, et al.,*
v. ZIM Integrated Shipping Services Ltd., et al.
1:19-cv-11495-RA
Our File: 6302

Dear Judge Abrams,

We represent Plaintiffs in the captioned matter and write to update the Court on its status. The claims Plaintiffs asserts against (*inter alia*) Defendant ZIM Integrated Shipping Services Ltd. (“ZIM”) in this action arise from the loss of a shipment of spices (“Cargo”) shipped under ZIM Bill of Lading ZIMUIZM18985308 and ZIMUIXZM1837993. See Complaint Docket Entry (“DE”) 1, and ZIM Bills of Lading ZIMUIZM18985308 and ZIMUIXZM1837993, attached hereto as Exhibit 1.

As Plaintiffs have advised in numerous letters to the Court¹, after Plaintiffs asked ZIM to accept service of process in this action, ZIM acknowledged that it failed to deliver the cargo and promised to settle Plaintiffs’ claims for full value if Plaintiffs could provide confirmation from the Turkish shippers and consignees named on the relevant ZIM Bills of Lading that they had no interest in the claims being asserted herein. See Exhibit 2, 4 May 2020 ZIM counsel correspondence.

¹ Docket Entries (“DE”) 17; 22; 24; 26; 29; 31; 33; 35; 37; 39; 41; 43; 45; 47; 49; 53; 55; 57; 59; 62; 64; and 66.

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In light of ZIM's assurances, Plaintiffs did not serve ZIM with service of process and advised the Court as much.² Instead, Plaintiffs' counsel advised ZIM's counsel that Plaintiffs would procure the assurances that ZIM demanded. In doing so, we advised that – because this would require coordination with Turkish companies over which Plaintiffs had no control – it would likely take time to procure those assurances.

Eventually, Plaintiffs successfully connected with counsel for Omega Shipping Tasimcilik ve Tic. Ltd. ("Omega"), the Shipper of Record on ZIM Bill of Lading ZIMUIZM18985308, and Mega Shipping and Forwarding Ltd. ("Mega"), the Consignee/Notify Party, on the same Bill of Lading. Per the 16 November 2020 release attached hereto as Exhibit 3 ("Omega/Mega Release"), Omega and Mega confirmed that they had no interest in the \$31,119.47 portion of Plaintiffs' claim associated with the damage caused to the Cargo shipped under ZIM Bill of Lading ZIMUIZM18985308. When Plaintiffs presented the Omega/Mega Release to ZIM, ZIM initially agreed to settle that \$31,119.47 portion of Plaintiffs' claim. Exhibit 4, 18 November and 2 December counsel correspondence. However, ZIM later asserted that, because ZIM Bill of Lading ZIMUIZM18985308 cross-referenced ZIM Bill of Lading ZIMUIXZM1837993, which named Alternatif Bank A.S. ("Alternatif"), as Consignee of Record, and Birlik Tuntun Pamuk Gida Mad. Ticaret ve Sanayi A.S. ("Birlik"), as Shipper of Record, ZIM would need like assurances from those entities before it would settle any portion of Plaintiffs' claim asserted in this matter. *Id.*

After ZIM demanded as much and undersigned counsel reiterated to ZIM's counsel that the assurances ZIM was demanding would take additional time to procure, Plaintiffs retained local Turkish counsel, Dr. Sami Askoy, to assist with securing those assurances. After Plaintiffs' counsel was mistakenly advised by Dr. Askoy that the assurances had been procured and Plaintiffs' counsel advised ZIM as much, ZIM reiterated its prior agreement to settle the claim in full provided the remaining Releases were provided. See Exhibit 5, 10-11 November 2021 counsel correspondence. Plaintiffs' counsel clarified that mistake and again advised ZIM that its efforts in Turkey would continue.

After extensive efforts, including extensive delays arising because of the COVID-19 Pandemic, Dr. Askoy finally successfully secured the final of the two additional assurances ZIM demanded from Alternatif and Birlik. See Alternatif and Birlik Releases, attached hereto as Exhibit 6. However, when Plaintiffs recently presented those Releases to ZIM, ZIM reneged on its agreement to settle Plaintiffs' claims in full and, instead, (notwithstanding its acknowledgement that

² See Docket Entries referenced in Footnote 1 *supra*, in which Plaintiffs advised (1) that, because of ZIM's position on settlement, Plaintiffs had not served that foreign entity, and (2) that, as a foreign entity, service on ZIM was not subject to the 90-day period set in Fed.R.Civ.P. 4. Fed.R.Civ.P. 4(m).

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this action was timely interposed) asserted that Plaintiffs' claim was time barred. See Exhibit 7, July 2023 counsel correspondence.

In light of ZIM's change in position, Plaintiffs were forced to serve ZIM. They did so by serving the original Complaint and a Hebrew translation thereof to ZIM's agent for service of process, located at 5801 Lake Wright Drive, Norfolk, Virginia 23502. See Exhibit 8.³ Service was completed on 15 August 2023. See Affidavit of Service, attached as Exhibit 9.

In light of the foregoing, Plaintiffs respectfully request that the Court declare that ZIM has been duly served and order a scheduling conference to establish a schedule of deadlines in this matter. Plaintiffs thank Your Honor for considering this request, which has been necessitated by ZIM's unanticipated change in its original settlement position.

Respectfully,

KENNEDY LILLIS SCHMIDT & ENGLISH

By: *s/ Nathan T. Williams*

Nathan T. Williams

³ After ZIM refused to settle on the terms previously agreed, Plaintiffs discovered in Zim Integrated Shipping Lines Ltd.'s 2022 Form 20-F Report filed with the Security and Exchange Commission (Exhibit 8) that, although it is an Israeli corporation, its agent for the service of process is Zim American Integrated Shipping Services Company, LLC, whose address is 5801 Lake Wright Drive, Norfolk, Virginia 23502. See Exhibit 8 (page 1 of which is Page 35 of the Form 20-F Report with the relevant language highlighted; the remaining portion of Exhibit 8 is the full Form 20-F Report).